

**Approvals**

**City Attorney**

**Finance Director**

**City Manager**



**CITY OF TEMECULA  
AGENDA REPORT**

**TO:** City Manager/City Council

**FROM:** Luke Watson, Director of Community Development

**DATE:** May 9, 2017

**SUBJECT:** Approve an Amendment to the Temecula Municipal Code Prohibiting All Commercial Marijuana Activity in the City and Amending Regulations Pertaining to Marijuana Cultivation Implementing Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act

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**PREPARED BY:** Dale West, Associate Planner II

**RECOMMENDATION:** That the City Council introduce and read by title only an ordinance entitled:

**ORDINANCE NO. 17-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMECULA AMENDING CHAPTER 8.52 OF TITLE 8, HEALTH AND SAFETY, OF THE TEMECULA MUNICIPAL CODE TO PROHIBIT COMMERCIAL MARIJUANA ACTIVITY IN THE CITY AND TO AMEND REGULATIONS PERTAINING TO MARIJUANA CULTIVATION, AND AMENDING TITLE 17, ZONING, TO PROHIBIT COMMERCIAL MARIJUANA ACTIVITY IN ALL ZONES AND TO AMEND REGULATIONS PERTAINING TO MARIJUANA CULTIVATION, AND FINDING THAT THIS ORDINANCE IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINES, SECTION 15061(B)(3)**

**SUMMARY OF**

**ORDINANCE:** A Municipal Code amendment prohibiting commercial marijuana activity including cultivation, possession, manufacturing, distribution, processing, storing, laboratory testing, labeling, transportation, delivery and sale of marijuana and marijuana products whether or not for profit in the City.

**BACKGROUND:** In April 2006, the City Council adopted Ordinance No. 06-05, amending sections of the Temecula Development Code prohibiting the establishment of medical marijuana dispensaries in all zones within the City.

In January 2016, the City Council adopted Ordinance No. 16-01, adding Chapter 8.52 prohibiting the cultivation of marijuana in all zones within the City, with limited exemption from enforcement for violations by primary caregivers and qualified patients for small amounts of marijuana cultivation for their own medical use.

On November 8, 2016, California voters passed the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA), legalizing the non-medical use of marijuana by persons 21 years of age and over and creating a state regulatory and licensing system for the commercial cultivation, testing, manufacturing and distribution of non-medical marijuana and related products.

The AUMA also allows local governments to adopt and enforce local ordinances to regulate non-medical marijuana businesses, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit commercial marijuana activities and businesses within their jurisdiction.

With the passage the AUMA, the City Council established a Marijuana Ad Hoc Subcommittee (Naggar/Rahn) to review legal, legislative, land use, financial and other issues related to the AUMA. The Ad Hoc Subcommittee met on January 24, 2017 and determined that further research and outreach is necessary to adequately identify and understand the impacts and/or opportunities created by the AUMA. With the understanding that additional research and outreach will take time, the Ad Hoc Subcommittee recommended that the City preserve its options by considering an ordinance that prohibits commercial marijuana activities while additional research and outreach can occur.

On February 28, 2017, the City Council considered and agreed with the recommendation provided by the Marijuana Ad Hoc Subcommittee. The City Council directed staff to prepare an ordinance preserving the City's right to regulate, license and/or prohibit commercial non-medical marijuana and marijuana activities.

On April 5, 2017, the Planning Commission considered the proposed ordinance. There were four public speakers; one spoke in favor of the ordinance, two spoke in favor of continued research and support for medical cannabis, and one speaker requested better clarification regarding restrictions on delivery of marijuana. The Commission discussed the ban on delivery of marijuana within the City and asked staff to provide clarified language for delivery of marijuana in the ordinance before it goes to the City Council for consideration. The Commission voted unanimously to adopt Resolution No. 17-06 recommending the City Council approve the ordinance amending the Municipal Code to prohibit all commercial marijuana activity within the City.

Language has been added to the ordinance to clarify the delivery of marijuana. The proposed ordinance now clarifies that delivery of marijuana or marijuana products to or from any location within the city is expressly prohibited.

**FISCAL IMPACT:** None

**ATTACHMENTS:**

1. Ordinance
2. Planning Commission Resolution No. 17-06
3. Planning Commission Staff Report



## ORDINANCE NO. 17-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMECULA AMENDING CHAPTER 8.52 OF TITLE 8, HEALTH AND SAFETY, OF THE TEMECULA MUNICIPAL CODE TO PROHIBIT COMMERCIAL MARIJUANA ACTIVITY IN THE CITY AND TO AMEND REGULATIONS PERTAINING TO MARIJUANA CULTIVATION, AND AMENDING TITLE 17, ZONING, TO PROHIBIT COMMERCIAL MARIJUANA ACTIVITY IN ALL ZONES AND TO AMEND REGULATIONS PERTAINING TO MARIJUANA CULTIVATION, AND FINDING THAT THIS ORDINANCE IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINES, SECTION 15061(B)(3)

THE CITY COUNCIL OF THE CITY OF TEMECULA DOES HEREBY ORDAIN AS FOLLOWS:

**Section 1.** Chapter 8.52 (Marijuana Cultivation) of Title 8 (Health and Safety) of the Temecula Municipal Code is hereby amended in its entirety to read as follows:

### **CHAPTER 8.52 – MARIJUANA CULTIVATION AND COMMERCIAL MARIJUANA ACTIVITY**

#### **Sections:**

**8.52.010 – Findings and purpose.**

**8.52.020 – Authority.**

**8.52.030 – Definitions.**

**8.52.040 – Prohibitions on commercial marijuana activity.**

**8.52.050 – Prohibitions on marijuana cultivation – Nuisance declared.**

**8.52.060 – Limited exemption from enforcement for medical marijuana.**

**8.52.070 – Abatement of other nuisances.**

**8.52.080 – Violations and penalties.**

#### **8.52.010 Findings and purpose.**

The City Council finds and declares the following:

A. The Control, Regulate and Tax Adult Use of Marijuana Act (the “AUMA”), was approved by the voters of the State of California on November 8, 2016. The AUMA adds Section 11362.1 to the Health and Safety Code, which makes it “lawful under state and local law” for persons 21 years of age or older to “possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever” up to 28.5 grams of marijuana not in the form of concentrated cannabis or up to eight grams of marijuana in the form of concentrated

cannabis. The provisions of the AUMA related to the possession, use, and cultivation of marijuana became effective on November 9, 2016.

B. To regulate the commercial use of non-medical marijuana, the AUMA adds Division 10 (Marijuana) to the Business & Professions Code, Sections 26000 et seq., which grants State agencies the authority to create, issue, renew, discipline, suspend, or revoke licenses for marijuana businesses. The AUMA provides that the State shall begin issuing licenses to marijuana businesses under Division 10 of the Business and Professions Code by January 1, 2018.

C. Business and Professions Code section 26055(e) provides that a State licensing authority shall not approve an application for a State license for commercial non-medical marijuana activity, if approval of the State license will violate the provisions of any local ordinance.

D. The AUMA permits cities to (1) adopt and enforce local ordinances to regulate non-medical marijuana businesses, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or (2) completely prohibit the establishment or operation of marijuana businesses within its jurisdiction.

E. The AUMA allows for the planting, cultivation, harvesting, drying and processing ("cultivation activities") of up to six marijuana plants in, or upon the grounds of, a private residence, as well as the possession of any marijuana produced by the plants. The AUMA authorizes a city to enact and enforce an ordinance that reasonably regulates cultivation activities, and to completely prohibit cultivation activities outdoors upon the grounds of a private residence unless the California Attorney General determines that non-medical use of marijuana is lawful in the State under Federal law.

F. On October 9, 2015, Governor Brown signed Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643 into law, which are now collectively known as the Medical Cannabis Regulation and Safety Act (hereinafter "MCRSA"). The MCRSA establishes a State licensing scheme for commercial medical marijuana uses, while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. The MCRSA allows a city to completely prohibit commercial medical marijuana activities, including the cultivation of medical marijuana.

G. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996" or "CUA"). The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments supporting

Proposition 215 expressly acknowledged that “Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere.”

H. In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7, *et seq.*, and referred to as the “Medical Marijuana Program” or “MMP”) to clarify the scope of Proposition 215, and to provide qualified patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances.

I. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land...” Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal. App.4th 975, the Court of Appeal held that “there is no right—and certainly no constitutional right—to cultivate medical marijuana...” The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.

J. The *Federal Controlled Substances Act*, 21 U.S.C. §§ 801, *et seq.*, classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for any purposes.

K. Cities in California have reported negative effects of marijuana cultivation, processing and distribution activities, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests. Furthermore, as marijuana plants begin to flower, and for a period of two months or more, the plants produce a strong, unique odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors. This odor can have the effect of encouraging theft by alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery of the plants and creating the potential for violent acts related to such criminal activity.

L. Marijuana cultivation in the City can adversely affect the health, safety, and well-being of City residents, visitors and workers. Regulating marijuana cultivation in the City is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, and malodorous smells that may result from unregulated marijuana cultivation, and that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

M. The justification for regulating or banning commercial marijuana cultivation pursuant to the City's police power includes, but is not limited to: 1) The increased risk to public health and safety, based on the value of marijuana plants and flowers and the accompanying threat of break-ins, robbery and theft, and attendant violence and injury; 2) the strong "skunk like" malodorous fumes emitted from mature plants which can interfere with the use and enjoyment of neighboring properties by their occupants; and 3) the potential for theft and use by school age children where marijuana is cultivated in a visible location, particularly where such location is close to schools.

N. As recognized by the Attorney General's August 2008 Guidelines for the security and non-diversion of marijuana grown for medical use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

#### **8.52.020 Authority.**

This ordinance is adopted pursuant to the authority granted by Article XI, section 7 of the California Constitution, Health and Safety Code section 11362.83, Government Code sections 25845 and 53069.4, the MCRSA, the AUMA, and other applicable law.

#### **8.52.030 Definitions.**

As used in this Chapter the following specific terms shall have the following meanings:

A. "AUMA" means the Control, Regulate and Tax Adult Use of Marijuana Act approved by the voters on November 8, 2016, as the same may be amended from time to time.

B. "Child care center" means any licensed child care center, daycare center, child care home, or any preschool.

C. "Community center" means any facility open to the public at which classes, social activities, recreational activities, educational activities, support and public information are offered for all residents of the community.

D. "Commercial marijuana activity" means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery, or sale of marijuana and marijuana products, whether or not for profit. "Commercial marijuana activity" also includes the activities of any business

licensed by the State or other government entity under Divisions 8 or 10 of the Business & Professions Code, as they may be amended from time to time.

E. “Concentrated cannabis” shall have the same meaning as “cannabis concentrate” as defined in Business and Professions Code section 19300.5, as the same may be amended from time to time.

F. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

G. “Delivery” means the commercial transfer of marijuana or marijuana products to a customer. “Delivery” also means the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under California law, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

H. “Distribution” means the procurement, sale, and transport of marijuana and marijuana products between entities licensed under Divisions 8 or 10 of the Business & Professions Code, as they may be amended from time to time.

I. “Fully enclosed and secure structure” means a space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors. The fully enclosed and secure structure must maintain a minimum ten (10) foot setback from any property line. Such setback distance shall be measured in a straight line from the fully enclosed and secure structure in which the marijuana plants are cultivated. The ten (10) foot setback requirement does not apply to cultivation occurring in a garage.

J. “Marijuana” means parts of the plant *Cannabis sativa* linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Marijuana” also means the separated resin, whether crude or purified, obtained from marijuana, and any product containing marijuana. It does not include:

1. Industrial hemp, as defined in Section 11018.5 of the California Health and Safety Code; or

2. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

Marijuana also includes “cannabis” as defined in Business and Professions Code section 19300.5(f), as the same may be amended from time to time.

K. "Marijuana cultivation" means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, fixed or mobile, for medical, non-medical or other uses.

L. "MCRSA" means the Medical Cannabis Regulation and Safety Act as contained, codified, enacted, and signed into law on October 9, 2015, as Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643, and as amended by Assembly Bill 21 in 2016, as the same may be amended from time to time.

M. "Person" means any individual, firm, co-partnership, joint venture, association, collective, cooperative, corporation, limited liability company, non-profit, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

N. "Primary caregiver" shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7, *et seq.*

O. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling that is lawfully used as a residence.

P. "Qualified patient" shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7, *et seq.*

Q. "School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a home school, vocational or professional institution of higher education, including a community or junior college, college, or university.

R. "Youth-oriented facility" means any facility that caters to or provides services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

#### **8.52.040 Prohibitions on commercial marijuana activity.**

A. Commercial marijuana activity for medical, non-medical or other purposes is expressly prohibited everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones. No person shall establish, operate, maintain, conduct or allow commercial marijuana activity for medical, non-medical or other purposes anywhere within the City. No application for a building permit, conditional use permit, business license, or any other entitlement authorizing the establishment, operation, maintenance, development, or construction of any use that allows for commercial marijuana activity for medical, non-medical, or other purposes, shall be approved by the City.



B. A property owner shall not rent, lease or otherwise permit any business that engages in commercial marijuana activity to occupy real property in the city. A property owner shall not allow any person or business to establish, operate, maintain, conduct, or engage in commercial marijuana activity on any real property owned or controlled by that property owner that is located in the City.

C. This section shall prohibit all activities for which a State license is required pursuant to the AUMA or the MCRSA. Accordingly, the City shall not issue any permit, license or other entitlement for any activity for which a State license is required under the AUMA or the MCRSA. The City shall also not issue any local license to a non-profit entity pursuant to Business and Professions Code section 26070.5.

D. To the extent not already prohibited by subsection A above, all deliveries of marijuana or marijuana products to or from any location in the city are expressly prohibited. No person shall conduct or perform any delivery of any marijuana or marijuana products, which delivery either originates or terminates within the city. This subsection shall not prohibit any person from transporting marijuana or marijuana products on public roads by a person licensed under either Chapter 3.5 of Division 8 or Division 10 of the California Business and Professions Code.

E. The prohibition in this section shall not prohibit a person 21 years of age or older from (1) possessing, processing, purchasing, transporting, obtaining or giving away to persons 21 years of age or older, without compensation whatsoever, not more than 28.5 grams of marijuana not in the form of concentrated cannabis or up to eight grams in the form of concentrated cannabis, (2) smoking or ingesting marijuana or marijuana products, (3) possessing, transporting, purchasing, obtaining, using, manufacturing, or giving away marijuana accessories to persons 21 years of age or older without compensation whatsoever, to the extent that such activities are authorized by Health and Safety Code section 11362.1, or (4) engaging in the indoor cultivation of six or fewer live marijuana plants within a single private residence or inside an accessory structure located upon the grounds of a private residence that is fully enclosed and secured, to the extent such cultivation is authorized by Health and Safety Code sections 11362.1 and 11362.2.

#### **8.52.050 Prohibitions on marijuana cultivation—Nuisance declared.**

A. Marijuana cultivation, outdoors, for medical, non-medical or other purposes, is prohibited everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones and is hereby declared to be unlawful and a public nuisance, except as otherwise provided in Section 8.52.060. No person owning, renting, leasing, occupying or having charge or possession of any parcel shall cause or allow such parcel to be used for cultivating marijuana outdoors. The foregoing prohibition shall be imposed regardless of the number of qualified patients or primary caregivers residing at the premises or participating directly or indirectly in the cultivation. Further, this prohibition shall be imposed notwithstanding any assertion that the person or persons cultivating marijuana are the primary caregiver or caregivers for qualified patients or that such person or persons are collectively or



cooperatively cultivating marijuana. There is a limited exemption from enforcement of this subsection as set forth in Section 8.52.060 below.

B. Marijuana cultivation, indoors, for medical purposes is prohibited. There is a limited exemption from enforcement of this subsection as set forth in Section 8.52.060 below.

C. Marijuana cultivation, indoors, for non-medical purposes will be allowed consistent with State law. As required by State law, no more than six (6) live marijuana plants may be planted, cultivated, harvested, dried, or processed within a single private residence or inside an accessory structure located upon the grounds of a private residence that is fully enclosed and secured. Any marijuana cultivation for non-medical marijuana purposes that exceeds the limits set forth in this subsection is hereby declared to be unlawful and a public nuisance.

#### **8.52.060 Limited exemption from enforcement for medical marijuana.**

A. The City is committed to making efficient and rational use of its limited investigative and prosecutorial resources. There shall be a limited exemption from enforcement for violations of this Chapter by primary caregivers and qualified patients for small amounts of marijuana cultivation for their own medical use in zone classifications identified in Section 17.06.030 on which a single family detached dwelling exists when all of the following conditions and standards are complied with:

1. The premises shall contain a legally permitted single family detached dwelling.

2. Cultivation of no more than twelve (12) marijuana plants per qualified patient. In the event a qualified patient has a primary caregiver cultivating marijuana plants for the qualified patient, only one primary caregiver may cultivate no more than twelve (12) marijuana plants for that qualified patient at any one time. In no circumstances shall a qualified patient have multiple primary caregivers cultivating marijuana plants for the qualified patient at the same time in the City.

3. Two (2) qualified patient limit to aggregate marijuana plant count for a maximum total of twenty-four (24) marijuana plants per premises.

4. At least one qualified patient or one primary caregiver, acting on behalf of the qualified patient pursuant to subsection A.2., must live on the premises.

5. All marijuana plants must be reasonably secured to prevent theft and access to the plants by persons under the age of twenty-one (21), to a standard satisfactory to the enforcement official.

6. All marijuana cultivation outside of any building must be fully enclosed by an opaque fence at least six (6) feet in height. The fence must be adequately secured to prevent unauthorized entry. Bushes, hedgerows, plastic sheeting, tarps, or cloth material shall not constitute an adequate fence under this subsection. Premises larger

than five (5) acres are exempt from this fencing provision so long as all other standards and conditions of subsection A. of this section are complied with and any barriers used are otherwise consistent with this Code.

7. Each building or outdoor area in which the marijuana plants are cultivated shall be set back at least ten (10) feet from all boundaries of the premises. Such setback distance shall be measured in a straight line from the building in which the marijuana plants are cultivated, or, if the marijuana plants are cultivated in an outdoor area, from the fence required by subsection A.6. to the boundary line of the premises.

8. The designated marijuana cultivation area must not be visible from any public right-of-way.

9. If the person cultivating marijuana plants on any premises is not the owner of the premises, such person shall submit a letter from the owner(s) consenting to the marijuana cultivation on the parcel. An original of this letter shall be submitted to and retained by the Community Development Department. The City shall prescribe forms for such letters.

10. Parolees or probationers shall not live on the premises unless the parolees or probationers have received written confirmation from the court that he or she is allowed to use medical marijuana while on parole or probation pursuant to Health & Safety Code section 11362.795 which shall be subject to verification by the enforcement official.

11. Qualified patients for whom the marijuana plants are being cultivated shall have valid medical marijuana identification cards issued by the Riverside County Department of Public Health. Any primary caregiver cultivating marijuana plants for a qualified patient shall have a copy of the qualified patient's valid medical marijuana identification card issued by the Riverside County Department of Public Health which shall be kept on the premises.

12. The address for the premises must be posted and plainly visible from the public right-of-way.

13. The marijuana cultivation shall not be within a building containing two or more dwelling units.

14. The marijuana cultivation shall not be upon any premises located within one thousand (1,000) feet of any school, community center, or park.

15. The marijuana cultivation shall not be upon any premises containing a child care center, church (religious facility), or youth-oriented facility.

B. Any marijuana cultivation for medical purposes that does not comply with all of the standards and conditions in subsection A. of this section is a public nuisance and shall be subject to penalties and abatement as provided in Title 1 and Chapters 8.12 and 8.52 this Code.

### **8.52.070 Abatement of other nuisances.**

Nothing in this Chapter shall be construed as a limitation on the City's authority to abate any nuisance which may otherwise exist from the planting, growing, harvesting, drying, processing or storage of marijuana plants or any part thereof from any location, indoor or outdoor, including from within a fully enclosed and secure building, as long as such abatement is consistent with State law.

### **8.52.080 Violations and penalties.**

A. Violation of any provision of this Chapter is a misdemeanor and is subject to enforcement pursuant to the provisions of Title 1 of this Code. The provisions of this Chapter may be enforced by members of the Riverside County Sheriff's Department, persons employed by the City whose job descriptions require the person to enforce the provisions of this Code, including but not limited to, code enforcement officers, and such other enforcement officials as described in Section 1.16.020 of this Code or its successor sections. No provision of Title 1 or this Chapter shall authorize a criminal prosecution or arrest prohibited by Health and Safety Code sections 11362.71 or 11362.1 *et seq.*, as the same may be amended from time to time. In the event of any conflict between the penalties enumerated under Title 1 or this Chapter and any penalties set forth in State law, the maximum penalties allowable under State law shall govern.

B. Any violation of this Chapter shall be, and the same is declared to be, unlawful and a public nuisance, and the City may, in addition to or in lieu of prosecuting a criminal or administrative action hereunder, commence an action or actions, proceeding or proceedings for the abatement, removal and enjoinder thereof, in the manner provided by law, and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such commercial marijuana business or marijuana cultivation site and restrain and enjoin any person from operating, conducting or maintaining a commercial marijuana business or marijuana cultivation site in a manner contrary to the provisions of this Chapter."

**Section 2.** Section 17.02.050 (Prohibited uses.) is hereby added to Chapter 17.02 (Establishment of Zoning Districts) of Title 17 (Zoning) of the Temecula Municipal Code to read as follows:

"Section 17.02.050 Prohibited uses.

"Commercial marijuana activity" and "marijuana cultivation" (as defined in Chapter 8.52) for medical, non-medical or other purposes, are prohibited uses everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones and shall be prohibited uses, except as otherwise provided in Sections 8.52.040, 8.52.050, and 8.52.060."

**Section 3.** Table 17.06.030 of Chapter 17.06 (Residential Districts) of Title 17 (Zoning) of the Temecula Municipal Code is hereby amended by adding Commerical Marijuana Activity as a prohibited use and amending footnote number 10 as follows:

<b>Table 17.06.030</b> <b>Residential Districts</b>									
<b>Description of Use</b>	<b>HR</b>	<b>RR</b>	<b>VL</b>	<b>L-1</b>	<b>L-2</b>	<b>LM</b>	<b>M</b>	<b>H</b>	<b>HR-SM<sup>9</sup></b>
Commercial Marijuana Activity	-	-	-	-	-	-	-	-	-
Marijuana Cultivation <sup>10</sup>									
<b>Notes:</b> 10. Marijuana cultivation (as defined in Chapter 8.52) for medical, non-medical or other purposes, are prohibited uses everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones and shall be prohibited uses, except as otherwise provided in Sections 8.52.040, 8.52.050, and 8.52.060 of the Temecula Municipal Code.									

**Section 4.** Table 17.08.030 of Chapter 17.08 (Commercial/Office/Industrial Districts) of Title 17 (Zoning) of the Temecula Municipal Code is hereby amended by adding Commerical Marijuana Activity as a prohibited use and adding footnote number 7 to Marijuana Cultivation as follows:

<b>Table 17.08.030</b> <b>Schedule of Permitted Uses</b> <b>Commercial/Office/Industrial Districts</b>								
<b>Description of Use</b>	<b>NC</b>	<b>CC</b>	<b>HT</b>	<b>SC</b>	<b>PO</b>	<b>BP</b>	<b>LI</b>	
Commercial Marijuana Activity	-	-	-	-	-	-	-	-
Marijuana Cultivation <sup>7</sup>								
<b>Notes:</b> 7. Marijuana cultivation (as defined in Chapter 8.52) for medical, non-medical or other purposes, are prohibited uses everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones and shall be prohibited uses, except as otherwise provided in Sections 8.52.040, 8.52.050, and 8.52.060 of the Temecula Municipal Code.								

**Section 5.** Table 17.12.030 of Chapter 17.12 (Public/Institutional District) of Title 17 (Zoning) of the Temecula Municipal Code is hereby amended by adding Commerical Marijuana Activity and Marijuana Cultivation as a prohibited uses and adding footnote number 3 to Marijuana Cultivation as follows:

<b>Table 17.12.030</b> <b>Schedule of Permitted Uses—Public/Institutional Districts</b>	
<b>Description of Use</b>	<b>Public/Institutional District (PI)</b>
Commercial Marijuana Activity	-
Marijuana Cultivation <sup>3</sup>	-

<b>Table 17.12.030</b> <b>Schedule of Permitted Uses—Public/Institutional Districts</b>	
<b>Description of Use</b>	<b>Public/Institutional District (PI)</b>
<b>Notes:</b> 3. Marijuana cultivation (as defined in Chapter 8.52) for medical, non-medical or other purposes, are prohibited uses everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones and shall be prohibited uses, except as otherwise provided in Sections 8.52.040, 8.52.050, and 8.52.060 of the Temecula Municipal Code.	

**Section 6.** Table 17.14.030 of Chapter 17.14 (Open Space/Recreation/Conservation Zoning Districts) of Title 17 (Zoning) of the Temecula Municipal Code is hereby amended by adding Commerical Marijuana Activity as a prohibited use and amending footnote number 2 as follows:

<b>Table 17.14.030</b> <b>Schedule of Permitted Uses—Open Space</b>				
<b>Schedule of Uses</b>	<b>PR</b>	<b>OS</b>	<b>OS-C</b>	<b>OS-C-SM</b>
Commercial Marijuana Activities	-	-	-	-
Marijuana Cultivation <sup>2</sup>	-	-	-	-
<b>Notes:</b> 2. Marijuana cultivation (as defined in Chapter 8.52) for medical, non-medical or other purposes, are prohibited uses everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones and shall be prohibited uses, except as otherwise provided in Sections 8.52.040, 8.52.050, and 8.52.060 of the Temecula Municipal Code.				

**Section 7.** Section 17.16.045 (Prohibited uses.) is hereby added to Chapter 17.16 (Specific Plan Zoning District (SP-)) of Title 17 (Zoning) of the Temecula Municipal Code to read as follows:

“Section 17.16.045 Prohibited uses.

“Commercial marijuana activity” and “marijuana cultivation” (as defined in Chapter 8.52) for medical, non-medical or other purposes, are prohibited uses everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones and shall be prohibited uses, except as otherwise provided in Sections 8.52.040, 8.52.050, and 8.52.060.”

**Section 8.** Section 17.22.030 (Permitted uses.) of Article 1 (Generally) of Chapter 17.22 (Planned Development Overlay Zoning District (PDO-)) of Title 17 (Zoning) of the Temecula Municipal Code is hereby amended by adding item D as follows:

“D. “Commercial marijuana activity” and “marijuana cultivation” (as defined in Chapter 8.52) for medical, non-medical or other purposes, are prohibited uses everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones and shall be prohibited uses, except as otherwise provided in Sections 8.52.040, 8.52.050, and 8.52.060.”

**Section 9. CEQA Findings.** The City Council finds that the adoption of this Ordinance is exempt from the requirements of the California Environmental Quality Act (“CEQA”) pursuant to Title 14, Chapter 3, California Code of Regulations (CEQA Guidelines), Section 15061(b)(3). It can be seen with certainty that there is no possibility that the adoption of this Ordinance will have a significant effect on the environment. The Ordinance prohibits commercial marijuana activity and regulates marijuana cultivation. Placing such a restriction on the use of property will not result in a permanent alteration of property nor the construction of any new or expanded structures.

**Section 10. Severability.** If any sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

**Section 11. Effect of Ordinance.** This Ordinance shall take effect thirty (30) days after passage.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Temecula this    day of    ,    .

---

Maryann Edwards, Mayor

ATTEST:

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Randi Johl, City Clerk

[SEAL]

STATE OF CALIFORNIA     )  
COUNTY OF RIVERSIDE    ) ss  
CITY OF TEMECULA         )

I, Randi Johl, City Clerk of the City of Temecula, do hereby certify that the foregoing Ordinance No. 17-         was duly introduced and placed upon its first reading at a meeting of the City Council of the City of Temecula on the 9th day of May, 2017, and that thereafter, said Ordinance was duly adopted by the City Council of the City of Temecula at a meeting thereof held on the         day of         ,         , by the following vote:

AYES:                   COUNCIL MEMBERS:

NOES:                   COUNCIL MEMBERS:

ABSTAIN:               COUNCIL MEMBERS:

ABSENT:                COUNCIL MEMBERS:

---

Randi Johl, City Clerk



**PC RESOLUTION NO.17-06**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF TEMECULA RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMECULA AMENDING CHAPTER 8.52 OF TITLE 8, HEALTH AND SAFETY, OF THE TEMECULA MUNICIPAL CODE TO PROHIBIT COMMERCIAL MARIJUANA ACTIVITY IN THE CITY AND TO AMEND REGULATIONS PERTAINING TO MARIJUANA CULTIVATION, AND AMENDING TITLE 17, ZONING, TO PROHIBIT COMMERCIAL MARIJUANA ACTIVITY IN ALL ZONES AND TO AMEND REGULATIONS PERTAINING TO MARIJUANA CULTIVATION, AND FINDING THAT THIS ORDINANCE IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO CEQA GUIDELINES, SECTION 15061(B)(3) (PLANNING APPLICATION NO. LR16-1056)”**

Section 1. Procedural Findings. The Planning Commission of the City of Temecula does hereby find, determine and declare that:

A. On April 5, 2017, the Planning Commission identified a need to amend sections of the Temecula Municipal Code to prohibit all commercial marijuana activity in the City and to amend regulations pertaining to marijuana cultivation in order to implement Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (Planning Application No. PA16-1056).

B. The proposed Ordinance was processed including, but not limited to a public notice, in the time and manner prescribed by State and local law.

C. The Planning Commission, at a regular meeting, considered the project and environmental review on April 5, 2017, at a duly noticed public hearing as prescribed by law, at which time the City staff and interested persons had an opportunity to and did testify either in support or in opposition to this matter.


D. At the conclusion of the Planning Commission hearing and after due consideration of the testimony, the Planning Commission recommended that the City Council approve Planning Application No. LR16-1056 subject to and based upon the findings set forth hereunder.

E. All legal preconditions to the adoption of this Resolution have occurred.

Section 2. Environmental Compliance. In accordance with the California Environmental Quality Act, the proposed Ordinance No. 17- (Ordinance regulating all commercial marijuana activity in the City and amending regulations pertaining to marijuana cultivation) is exempt from the requirements of the California

Environmental Quality Act ("CEQA") pursuant to Title 14 of the California Code of Regulations, Section 15061 (b) (3) because it can be seen with certainty that there is no possibility that the Ordinance will have a significant effect on the environment. The proposed ordinance bans commercial marijuana activity in the City and amends regulations pertaining to marijuana cultivation. Placing such a restriction on the use of property will not result in a permanent alteration of property or the construction of any new or expanded structures. The Planning Commission, therefore, recommends that the City Council of the City of Temecula adopt a Notice of Exemption for the proposed ordinance.


Section 3. Recommendation. The Planning Commission of the City of Temecula recommends that the City Council approve Planning Application No. LR16-1056, a proposed Citywide Ordinance as set forth on Exhibit A, attached hereto, and incorporated herein by this reference.

  
John Telesio, Chairman

  
Luke Watson  
Secretary

STATE OF CALIFORNIA            )  
COUNTY OF RIVERSIDE        )ss  
CITY OF TEMECULA            )

AYES:	5	PLANNING COMMISSIONERS:	Guerriero, Telesio, Turley-Trejo, Watts, Youmans
NOES:	0	PLANNING COMMISSIONERS:	None
ABSENT:	0	PLANNING COMMISSIONERS:	None
ABSTAIN:	0	PLANNING COMMISSIONERS:	None

  
Luke Watson  
Secretary

**ORDINANCE NO. 17-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMECULA AMENDING CHAPTER 8.52 OF TITLE 8, HEALTH AND SAFETY, OF THE TEMECULA MUNICIPAL CODE TO PROHIBIT COMMERCIAL MARIJUANA ACTIVITY IN THE CITY AND TO AMEND REGULATIONS PERTAINING TO MARIJUANA CULTIVATION, AND AMENDING TITLE 17, ZONING, TO PROHIBIT COMMERCIAL MARIJUANA ACTIVITY IN ALL ZONES AND TO AMEND REGULATIONS PERTAINING TO MARIJUANA CULTIVATION, AND FINDING THAT THIS ORDINANCE IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO CEQA GUIDELINES, SECTION 15061(B)(3)**

**THE CITY COUNCIL OF THE CITY OF TEMECULA DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1.** Chapter 8.52 (Marijuana Cultivation) of Title 8 (Health and Safety) of the Temecula Municipal Code is hereby amended in its entirety to read as follows:

**CHAPTER 8.52 – MARIJUANA CULTIVATION AND COMMERCIAL MARIJUANA ACTIVITY**

**Sections:**

**8.52.010 – Findings and purpose.**

**8.52.020 – Authority.**

**8.52.030 – Definitions.**

**8.52.040 – Prohibitions on commercial marijuana activity.**

**8.52.050 – Prohibitions on marijuana cultivation – Nuisance declared.**

**8.52.060 – Limited exemption from enforcement for medical marijuana.**

**8.52.070 – Abatement of other nuisances.**

**8.52.080 – Violations and penalties.**

**8.52.010 Findings and purpose.**

The City Council finds and declares the following:

A. The Control, Regulate and Tax Adult Use of Marijuana Act (the "AUMA"), was approved by the voters of the State of California on November 8, 2016. The AUMA adds Section 11362.1 to the Health and Safety Code, which makes it "lawful under state and local law" for persons 21 years of age or older to "possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever" up to 28.5 grams of marijuana not in the form of concentrated cannabis or up to eight grams of marijuana in the form of concentrated

cannabis. The provisions of the AUMA related to the possession, use, and cultivation of marijuana became effective on November 9, 2016.

B. To regulate the commercial use of non-medical marijuana, the AUMA adds Division 10 (Marijuana) to the Business & Professions Code, Sections 26000 et seq., which grants State agencies the authority to create, issue, renew, discipline, suspend, or revoke licenses for marijuana businesses. The AUMA provides that the State shall begin issuing licenses to marijuana businesses under Division 10 of the Business and Professions Code by January 1, 2018.

C. Business and Professions Code section 26055(e) provides that a State licensing authority shall not approve an application for a State license for commercial non-medical marijuana activity, if approval of the State license will violate the provisions of any local ordinance.

D. The AUMA permits cities to (1) adopt and enforce local ordinances to regulate non-medical marijuana businesses, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or (2) completely prohibit the establishment or operation of marijuana businesses within its jurisdiction.

E. The AUMA allows for the planting, cultivation, harvesting, drying and processing ("cultivation activities") of up to six marijuana plants in, or upon the grounds of, a private residence, as well as the possession of any marijuana produced by the plants. The AUMA authorizes a city to enact and enforce an ordinance that reasonably regulates cultivation activities, and to completely prohibit cultivation activities outdoors upon the grounds of a private residence unless the California Attorney General determines that non-medical use of marijuana is lawful in the State under Federal law.

F. On October 9, 2015, Governor Brown signed Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643 into law, which are now collectively known as the Medical Cannabis Regulation and Safety Act (hereinafter "MCRSA"). The MCRSA establishes a State licensing scheme for commercial medical marijuana uses, while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. The MCRSA allows a city to completely prohibit commercial medical marijuana activities, including the cultivation of medical marijuana.

G. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996" or "CUA"). The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments supporting

Proposition 215 expressly acknowledged that “Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere.”

H. In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7, *et seq.*, and referred to as the “Medical Marijuana Program” or “MMP”) to clarify the scope of Proposition 215, and to provide qualified patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances.

I. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land...” Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal. App.4th 975, the Court of Appeal held that “there is no right—and certainly no constitutional right—to cultivate medical marijuana...” The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority. Numerous court decisions have held that the CUA and MMP provide criminal law immunities for qualified patients, persons with identification cards, and primary caregivers to possess, store and cultivate marijuana, but do not preempt local land use ordinances from prohibiting medical marijuana businesses, deliveries, storage, possession and cultivation. *Kirby v. County of Fresno*, 242 Cal.App.4th 940, 969-70 (2015); *Safe Life Caregivers v. City of Los Angeles*, 243 Cal.App.4th 1029, 1032 (2016).

J. The Federal Controlled Substances Act, 21 U.S.C. §§ 801, *et seq.*, classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for any purposes.

K. Cities in California have reported negative effects of marijuana cultivation, processing and distribution activities, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests. Furthermore, as marijuana plants begin to flower, and for a period of two months or more, the plants produce a strong, unique odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors. This odor can have the effect of encouraging



theft by alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery of the plants and creating the potential for violent acts related to such criminal activity.

L. Marijuana cultivation in the City can adversely affect the health, safety, and well-being of City residents, visitors and workers. Regulating marijuana cultivation in the City is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, and malodorous smells that may result from unregulated marijuana cultivation, and that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

M. The justification for regulating or banning commercial marijuana cultivation pursuant to the City's police power includes, but is not limited to: 1) The increased risk to public health and safety, based on the value of marijuana plants and flowers and the accompanying threat of break-ins, robbery and theft, and attendant violence and injury; 2) the strong "skunk like" malodorous fumes emitted from mature plants which can interfere with the use and enjoyment of neighboring properties by their occupants; and 3) the potential for theft and use by school age children where marijuana is cultivated in a visible location, particularly where such location is close to schools.

N. As recognized by the Attorney General's August 2008 Guidelines for the security and non-diversion of marijuana grown for medical use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

#### **8.52.020 Authority.**

This ordinance is adopted pursuant to the authority granted by Article XI, section 7 of the California Constitution, Health and Safety Code section 11362.83, Government Code sections 25845 and 53069.4, the MCRSA, the AUMA, and other applicable law.

#### **8.52.030 Definitions.**

As used in this Chapter the following specific terms shall have the following meanings:

A. "AUMA" means the Control, Regulate and Tax Adult Use of Marijuana Act approved by the voters on November 8, 2016, as the same may be amended from time to time.

B. "Child care center" means any licensed child care center, daycare center, child care home, or any preschool.

C. "Community center" means any facility open to the public at which classes, social activities, recreational activities, educational activities, support and public information are offered for all residents of the community.



D. "Commercial marijuana activity" means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery, or sale of marijuana and marijuana products, whether or not for profit. "Commercial marijuana activity" also includes the activities of any business licensed by the State or other government entity under Divisions 8 or 10 of the Business & Professions Code, as they may be amended from time to time.

E. "Concentrated cannabis" shall have the same meaning as "cannabis concentrate" as defined in Business and Professions Code section 19300.5, as the same may be amended from time to time.

F. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

G. "Delivery" means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also means the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under California law, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

H. "Distribution" means the procurement, sale, and transport of marijuana and marijuana products between entities licensed under Divisions 8 or 10 of the Business & Professions Code, as they may be amended from time to time.

I. "Fully enclosed and secure structure" means a space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors. The fully enclosed and secure structure must maintain a minimum ten (10) foot setback from any property line. Such setback distance shall be measured in a straight line from the fully enclosed and secure structure in which the marijuana plants are cultivated. The ten (10) foot setback requirement does not apply to cultivation occurring in a garage.

J. "Marijuana" means parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Marijuana" also means the separated resin, whether crude or purified, obtained from marijuana, and any product containing marijuana. It does not include:

1. Industrial hemp, as defined in Section 11018.5 of the California Health and Safety Code; or

2. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

Marijuana also includes “cannabis” as defined in Business and Professions Code section 19300.5(f), as the same may be amended from time to time.

K. “Marijuana cultivation” means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, fixed or mobile, for medical, non-medical or other uses.

L. “MCRSA” means the Medical Cannabis Regulation and Safety Act as contained, codified, enacted, and signed into law on October 9, 2015, as Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643, and as amended by Assembly Bill 21 in 2016, as the same may be amended from time to time.

M. “Person” means any individual, firm, co-partnership, joint venture, association, collective, cooperative, corporation, limited liability company, non-profit, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

N. “Primary caregiver” shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7, *et seq.*

O. “Private residence” means a house, an apartment unit, a mobile home, or other similar dwelling that is lawfully used as a residence.

P. “Qualified patient” shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7, *et seq.*

Q. “School” means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a home school, vocational or professional institution of higher education, including a community or junior college, college, or university.

R. “Youth-oriented facility” means any facility that caters to or provides services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

#### **8.52.040 Prohibitions on commercial marijuana activity.**

A. Commercial marijuana activity for medical, non-medical or other purposes is expressly prohibited everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones. No person shall establish, operate, maintain, conduct or allow commercial marijuana activity for medical, non-medical or other purposes anywhere within the City. No application for a building permit, conditional use permit, business license, or any other entitlement authorizing the establishment, operation, maintenance, development, or construction of any use that allows for commercial marijuana activity for medical, non-medical, or other purposes, shall be approved by the City.

B. A property owner shall not rent, lease or otherwise permit any business that engages in commercial marijuana activity to occupy real property in the city. A property owner shall not allow any person or business to establish, operate, maintain, conduct, or engage in commercial marijuana activity on any real property owned or controlled by that property owner that is located in the City.

C. This section shall prohibit all activities for which a State license is required pursuant to the AUMA or the MCRSA. Accordingly, the City shall not issue any permit, license or other entitlement for any activity for which a State license is required under the AUMA or the MCRSA. The City shall also not issue any local license to a non-profit entity pursuant to Business and Professions Code section 26070.5.

D. The prohibition in this section shall not prohibit a person 21 years of age or older from (1) possessing, processing, purchasing, transporting, obtaining or giving away to persons 21 years of age or older, without compensation whatsoever, not more than 28.5 grams of marijuana not in the form of concentrated cannabis or up to eight grams in the form of concentrated cannabis, (2) smoking or ingesting marijuana or marijuana products, (3) possessing, transporting, purchasing, obtaining, using, manufacturing, or giving away marijuana accessories to persons 21 years of age or older without compensation whatsoever, to the extent that such activities are authorized by Health and Safety Code section 11362.1, or (4) engaging in the indoor cultivation of six or fewer live marijuana plants within a single private residence or inside an accessory structure located upon the grounds of a private residence that is fully enclosed and secured, to the extent such cultivation is authorized by Health and Safety Code sections 11362.1 and 11362.2.

E. The prohibition in this section shall not prohibit the transportation of marijuana or marijuana products on public roads by a person licensed by Chapter 3.5 of Division 8 or Division 10 of the Business and Professions Code.

#### **8.52.050 Prohibitions on marijuana cultivation—Nuisance declared.**

A. Marijuana cultivation, outdoors, for medical, non-medical or other purposes, is prohibited everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones and is hereby declared to be unlawful and a public nuisance, except as otherwise provided in Section 8.52.060. No person owning, renting, leasing, occupying or having charge or possession of any parcel shall cause or allow such parcel to be used for cultivating marijuana outdoors. The foregoing prohibition shall be imposed regardless of the number of qualified patients or primary caregivers residing at the premises or participating directly or indirectly in the cultivation. Further, this prohibition shall be imposed notwithstanding any assertion that the person or persons cultivating marijuana are the primary caregiver or caregivers for qualified patients or that such person or persons are collectively or cooperatively cultivating marijuana. There is a limited exemption from enforcement of this subsection as set forth in Section 8.52.060 below.

B. Marijuana cultivation, indoors, for medical purposes is prohibited. There is a limited exemption from enforcement of this subsection as set forth in Section 8.52.060 below.

C. Marijuana cultivation, indoors, for non-medical purposes will be allowed consistent with State law. As required by State law, no more than six (6) live marijuana plants may be planted, cultivated, harvested, dried, or processed within a single private residence or inside an accessory structure located upon the grounds of a private residence that is fully enclosed and secured. Any marijuana cultivation for non-medical marijuana purposes that exceeds the limits set forth in this subsection is hereby declared to be unlawful and a public nuisance.

#### **8.52.060 Limited exemption from enforcement for medical marijuana.**

A. The City is committed to making efficient and rational use of its limited investigative and prosecutorial resources. There shall be a limited exemption from enforcement for violations of this Chapter by primary caregivers and qualified patients for small amounts of marijuana cultivation for their own medical use in zone classifications identified in Section 17.06.030 on which a single family detached dwelling exists when all of the following conditions and standards are complied with:

1. The premises shall contain a legally permitted single family detached dwelling.

2. Cultivation of no more than twelve (12) marijuana plants per qualified patient. In the event a qualified patient has a primary caregiver cultivating marijuana plants for the qualified patient, only one primary caregiver may cultivate no more than twelve (12) marijuana plants for that qualified patient at any one time. In no circumstances shall a qualified patient have multiple primary caregivers cultivating marijuana plants for the qualified patient at the same time in the City.

3. Two (2) qualified patient limit to aggregate marijuana plant count for a maximum total of twenty-four (24) marijuana plants per premises.

4. At least one qualified patient or one primary caregiver, acting on behalf of the qualified patient pursuant to subsection A.2., must live on the premises.

5. All marijuana plants must be reasonably secured to prevent theft and access to the plants by persons under the age of twenty-one (21), to a standard satisfactory to the enforcement official.

6. All marijuana cultivation outside of any building must be fully enclosed by an opaque fence at least six (6) feet in height. The fence must be adequately secured to prevent unauthorized entry. Bushes, hedgerows, plastic sheeting, tarps, or cloth material shall not constitute an adequate fence under this subsection. Premises larger than five (5) acres are exempt from this fencing provision so long as all other standards and conditions of subsection A. of this section are complied with and any barriers used are otherwise consistent with this Code.

7. Each building or outdoor area in which the marijuana plants are cultivated shall be set back at least ten (10) feet from all boundaries of the premises. Such setback distance shall be measured in a straight line from the building in which the marijuana plants are cultivated, or, if the marijuana plants are cultivated in an outdoor area, from the fence required by subsection A.6. to the boundary line of the premises.

8. The designated marijuana cultivation area must not be visible from any public right-of-way.

9. If the person cultivating marijuana plants on any premises is not the owner of the premises, such person shall submit a letter from the owner(s) consenting to the marijuana cultivation on the parcel. An original of this letter shall be submitted to and retained by the Community Development Department. The City shall prescribe forms for such letters.

10. Parolees or probationers shall not live on the premises unless the parolees or probationers have received written confirmation from the court that he or she is allowed to use medical marijuana while on parole or probation pursuant to Health & Safety Code section 11362.795 which shall be subject to verification by the enforcement official.

11. Qualified patients for whom the marijuana plants are being cultivated shall have valid medical marijuana identification cards issued by the Riverside County Department of Public Health. Any primary caregiver cultivating marijuana plants for a qualified patient shall have a copy of the qualified patient's valid medical marijuana identification card issued by the Riverside County Department of Public Health which shall be kept on the premises.

12. The address for the premises must be posted and plainly visible from the public right-of-way.

13. The marijuana cultivation shall not be within a building containing two or more dwelling units.

14. The marijuana cultivation shall not be upon any premises located within one thousand (1,000) feet of any school, community center, or park.

15. The marijuana cultivation shall not be upon any premises containing a child care center, church (religious facility), or youth-oriented facility.

B. Any marijuana cultivation for medical purposes that does not comply with all of the standards and conditions in subsection A. of this section is a public nuisance and shall be subject to penalties and abatement as provided in Title 1 and Chapters 8.12 and 8.52 this Code.

**8.52.070 Abatement of other nuisances.**

Nothing in this Chapter shall be construed as a limitation on the City's authority to abate any nuisance which may otherwise exist from the planting, growing, harvesting, drying, processing or storage of marijuana plants or any part thereof from any location, indoor or outdoor, including from within a fully enclosed and secure building, as long as such abatement is consistent with State law.

#### **8.52.080 Violations and penalties.**

A. Violation of any provision of this Chapter is a misdemeanor and is subject to enforcement pursuant to the provisions of Title 1 of this Code. The provisions of this Chapter may be enforced by members of the Riverside County Sheriff's Department, persons employed by the City whose job descriptions require the person to enforce the provisions of this Code, including but not limited to, code enforcement officers, and such other enforcement officials as described in Section 1.16.020 of this Code or its successor sections. No provision of Title 1 or this Chapter shall authorize a criminal prosecution or arrest prohibited by Health and Safety Code sections 11362.71 or 11362.1 *et seq.*, as the same may be amended from time to time. In the event of any conflict between the penalties enumerated under Title 1 or this Chapter and any penalties set forth in State law, the maximum penalties allowable under State law shall govern.

B. Any violation of this Chapter shall be, and the same is declared to be, unlawful and a public nuisance, and the City may, in addition to or in lieu of prosecuting a criminal or administrative action hereunder, commence an action or actions, proceeding or proceedings for the abatement, removal and enjoinder thereof, in the manner provided by law, and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such commercial marijuana business or marijuana cultivation site and restrain and enjoin any person from operating, conducting or maintaining a commercial marijuana business or marijuana cultivation site in a manner contrary to the provisions of this Chapter."

**Section 2.** Section 17.02.050 is hereby added to the Temecula Municipal Code to read as follows:

"“Commercial marijuana activity” and “marijuana cultivation” (as defined in Chapter 8.52) for medical, non-medical or other purposes, are prohibited uses everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones and shall be prohibited uses, except as otherwise provided in Sections 8.52.040, 8.52.050, and 8.52.060.”

**Section 3.** The Community Development Director is authorized and directed to update the Use Regulations and Tables contained in Title 17, Zoning, to provide that commercial marijuana activity” and “marijuana cultivation” (as defined in Chapter 8.52) for medical, non-medical or other purposes, are prohibited uses everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones and shall be prohibited uses, except as otherwise provided in Sections 8.52.040, 8.52.050, and 8.52.060.



**Section 4 CEQA Findings.** The City Council finds that the adoption of this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Title 14, Chapter 3, California Code of Regulations (CEQA Guidelines), Section 15061(b)(3). It can be seen with certainty that there is no possibility that the adoption of this Ordinance will have a significant effect on the environment. The Ordinance prohibits commercial marijuana activity and regulates marijuana cultivation. Placing such a restriction on the use of property will not result in a permanent alteration of property nor the construction of any new or expanded structures.

**Section 5. Severability.** If any sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

**Section 6. Effect of Ordinance.** This Ordinance shall take effect thirty (30) days after passage

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Temecula this \_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Michael S. Naggar, Mayor

ATTEST:

\_\_\_\_\_  
Randi Johl, City Clerk

[SEAL]

STATE OF CALIFORNIA     )  
COUNTY OF RIVERSIDE   ) ss  
CITY OF TEMECULA        )

I, Randi Johl, City Clerk of the City of Temecula, do hereby certify that the foregoing Ordinance No. 17-     was duly introduced and placed upon its first reading at a



meeting of the City Council of the City of Temecula on the \_\_\_\_ day of \_\_\_\_\_, 2017,  
and that thereafter, said Ordinance was duly adopted by the City Council of the City of  
Temecula at a meeting thereof held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

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Randi Johl, City Clerk

**STAFF REPORT – PLANNING  
CITY OF TEMECULA  
PLANNING COMMISSION**

**DATE OF MEETING:** April 5, 2017

**TO:** Planning Commission Chairperson and members of the Planning Commission

**FROM:** Luke Watson, Director of Community Development

**PREPARED BY:** Dale West, Case Planner

**PROJECT SUMMARY:** Long Range Planning Application Number LR16-1056, a Municipal Code amendment to prohibit all commercial marijuana activity in the City and to amend regulations pertaining to marijuana cultivation in order to implement Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act.

**CEQA:** Notice of Determination  
Title 14, Chapter 3, California Code of Regulations (CEQA Guidelines), Section 15061(b)(3)

**RECOMMENDATION:** Adopt a resolution recommending that the City Council:

1. Amend Chapter 8.52 of the Temecula Municipal Code to prohibit commercial marijuana activity (which is defined to include cultivation, possession, manufacturing, distribution, processing, storing, laboratory testing, labeling, transportation, delivery, and the sale of marijuana and marijuana products, whether or not for profit) in the City.
2. Amend Title 17, Zoning, to prohibit all uses involving commercial marijuana activity everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones.
3. Amend Title 17, Zoning, to (a) prohibit marijuana cultivation outdoors, except as allowed for medical purposes under certain conditions, (b) allow the cultivation of up to six marijuana plants indoors for recreational purposes consistent with the Regulate, Control and Tax Adult Use of Marijuana Act, and (c) allow the cultivation of up to twelve marijuana plants indoors or outdoors for medical purposes under certain conditions.

**BACKGROUND SUMMARY**

On November 8, 2016, California voters passed the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA) legalizing the non-medical use of marijuana by persons 21 years of age and over and creating a state regulatory and licensing system for the commercial cultivation, testing, manufacturing and distribution of non-medical marijuana and related products.

The AUMA also allows local governments to adopt and enforce local ordinances to regulate non-medical marijuana businesses, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit commercial marijuana activities and businesses within their jurisdiction.

## **ANALYSIS**

### **Background**

In April 2006, the City Council adopted Ordinance No. 06-05, amending Sections of the Temecula Development Code prohibiting the establishment of medical marijuana dispensaries in all zones within the City.

In January 2016, the City Council adopted Ordinance No. 16-01, adding Chapter 8.52 prohibiting the cultivation of marijuana in all zones within the City, with limited exemption from enforcement for violations by primary caregivers and qualified patients for small amounts of marijuana cultivation for their own medical use.

With the passage the AUMA, the City Council established a Marijuana Subcommittee (Naggar/Rahn) to review legal, legislative, land use, financial and other issues related to the AUMA. The Subcommittee met on January 24, 2017 and determined that further research and outreach is necessary to adequately identify and understand the impacts and/or opportunities created by the AUMA. With the understanding that additional research and outreach will take additional time, the Subcommittee recommended that the City preserve its options by considering an ordinance that prohibits commercial marijuana activities while additional research and outreach can occur.

On February 28, 2017, the City Council considered and agreed with the recommendation provided by the Marijuana Subcommittee. The City Council directed staff to prepare an ordinance preserving the City's right to regulate, license and/or prohibit commercial non-medical marijuana and marijuana activities.

### **Proposed Ordinance**

The proposed Ordinance would:

1. Amend Chapter 8.52 of the Temecula Municipal Code to prohibit commercial marijuana activity (which is defined to include cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery, and sale of marijuana and marijuana products whether or not for profit) in the City,
2. Amend Title 17, Zoning, to prohibit all uses involving commercial marijuana activity everywhere in the City including all zoning districts, specific plan areas, planned development zones and overlay zones.
3. Amend Title 17, Zoning, to:
  - a. Prohibit marijuana cultivation outdoors, except as allowed for medical purposes under certain conditions,

- b. Allow the cultivation of up to six marijuana plants indoors for non-medical purposes consistent with the AUMA, and
- c. Allow the cultivation of up to twelve marijuana plants indoors or outdoors for medical purposes under certain conditions.

Pursuant to State law, the City may not prohibit the transportation of marijuana on public roads that pass through the City.

Indoor marijuana cultivation for non-medical purposes will only be permitted at private residences, either inside the residence or inside a fully enclosed and secured structure at the residential site. As proposed, a "fully enclosed and secure structure" is defined to mean a space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors.

The proposed Ordinance would not effect the City's existing regulations pertaining to medical marijuana cultivation.

The proposed Ordinance would also not prohibit a person 21 years of age or older from (1) possessing, processing, purchasing, transporting, obtaining or giving away to persons 21 years of age or older, without compensation whatsoever, not more than 28.5 grams of marijuana not in the form of concentrated cannabis or up to eight grams in the form of concentrated cannabis, (2) smoking or ingesting marijuana or marijuana products, or (3) possessing, transporting, purchasing, obtaining, using, manufacturing, or giving away marijuana accessories to persons 21 years of age or older without compensation whatsoever, since these activities are expressly authorized pursuant to the AUMA.

## **LEGAL NOTICING REQUIREMENTS**

Notice of the public hearing was published in the *U-T San Diego* on March 23, 2017.

## **ENVIRONMENTAL DETERMINATION**

In accordance with the California Environmental Quality Act (CEQA), the proposed project has been deemed to be exempt from further environmental review. In accordance with the CEQA, the proposed ordinance is exempt from the requirements CEQA pursuant to Title 14, Chapter 3, California Code of Regulations (CEQA Guidelines), Section 15061(b)(3). It can be seen with certainty that there is no possibility that the adoption of this ordinance will have a significant effect on the environment. The proposed ordinance bans commercial marijuana activity in the City and amends regulations pertaining to marijuana cultivation. Placing such a restriction on the use of property will not result in a permanent alteration of property nor the construction of any new or expanded structures.

## **ATTACHMENTS**

PC Resolution  
Ordinance No. 17-  
Notice of Public Hearing

**PC RESOLUTION NO.17-**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF TEMECULA RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMECULA AMENDING CHAPTER 8.52 OF TITLE 8, HEALTH AND SAFETY, OF THE TEMECULA MUNICIPAL CODE TO PROHIBIT COMMERCIAL MARIJUANA ACTIVITY IN THE CITY AND TO AMEND REGULATIONS PERTAINING TO MARIJUANA CULTIVATION, AND AMENDING TITLE 17, ZONING, TO PROHIBIT COMMERCIAL MARIJUANA ACTIVITY IN ALL ZONES AND TO AMEND REGULATIONS PERTAINING TO MARIJUANA CULTIVATION, AND FINDING THAT THIS ORDINANCE IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO CEQA GUIDELINES, SECTION 15061(B)(3) (PLANNING APPLICATION NO. LR16-1056)**

Section 1. Procedural Findings. The Planning Commission of the City of Temecula does hereby find, determine and declare that:

A. On April 5, 2017, the Planning Commission identified a need to amend sections of the Temecula Municipal Code to prohibit all commercial marijuana activity in the City and to amend regulations pertaining to marijuana cultivation in order to implement Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (Planning Application No. PA16-1056).

B. The proposed Ordinance was processed including, but not limited to a public notice, in the time and manner prescribed by State and local law.

C. The Planning Commission, at a regular meeting, considered the project and environmental review on April 5, 2017, at a duly noticed public hearing as prescribed by law, at which time the City staff and interested persons had an opportunity to and did testify either in support or in opposition to this matter.

D. At the conclusion of the Planning Commission hearing and after due consideration of the testimony, the Planning Commission recommended that the City Council approve Planning Application No. LR16-1056 subject to and based upon the findings set forth hereunder.

E. All legal preconditions to the adoption of this Resolution have occurred.

Section 2. Environmental Compliance. In accordance with the California Environmental Quality Act, the proposed Ordinance No. 17- (Ordinance regulating all commercial marijuana activity in the City and amending regulations pertaining to marijuana cultivation) is exempt from the requirements of the California

Environmental Quality Act ("CEQA") pursuant to Title 14 of the California Code of Regulations, Section 15061 (b) (3) because it can be seen with certainty that there is no possibility that the Ordinance will have a significant effect on the environment. The proposed ordinance bans commercial marijuana activity in the City and amends regulations pertaining to marijuana cultivation. Placing such a restriction on the use of property will not result in a permanent alteration of property or the construction of any new or expanded structures. The Planning Commission, therefore, recommends that the City Council of the City of Temecula adopt a Notice of Exemption for the proposed ordinance.

Section 3. Recommendation. The Planning Commission of the City of Temecula recommends that the City Council approve Planning Application No. LR16-1056, a proposed Citywide Ordinance as set forth on Exhibit A, attached hereto, and incorporated herein by this reference.



Section 4. **PASSED, APPROVED AND ADOPTED** by the City of Temecula Planning Commission this 5th day of April 2017.

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John Telesio, Chairman

ATTEST:

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Luke Watson  
Secretary

[SEAL]

STATE OF CALIFORNIA     )  
COUNTY OF RIVERSIDE    )ss  
CITY OF TEMECULA         )

I, Luke Watson, Secretary of the Temecula Planning Commission, do hereby certify that the forgoing PC Resolution No. 17-         was duly and regularly adopted by the Planning Commission of the City of Temecula at a regular meeting thereof held on the 5th day of April 2017, by the following vote:

AYES:                 PLANNING COMMISSIONERS:

NOES:                PLANNING COMMISSIONERS:

ABSENT:             PLANNING COMMISSIONERS:

ABSTAIN:            PLANNING COMMISSIONERS:

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Luke Watson  
Secretary

**ORDINANCE NO. 17-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMECULA AMENDING CHAPTER 8.52 OF TITLE 8, HEALTH AND SAFETY, OF THE TEMECULA MUNICIPAL CODE TO PROHIBIT COMMERCIAL MARIJUANA ACTIVITY IN THE CITY AND TO AMEND REGULATIONS PERTAINING TO MARIJUANA CULTIVATION, AND AMENDING TITLE 17, ZONING, TO PROHIBIT COMMERCIAL MARIJUANA ACTIVITY IN ALL ZONES AND TO AMEND REGULATIONS PERTAINING TO MARIJUANA CULTIVATION, AND FINDING THAT THIS ORDINANCE IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO CEQA GUIDELINES, SECTION 15061(B)(3)**

**THE CITY COUNCIL OF THE CITY OF TEMECULA DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1.** Chapter 8.52 (Marijuana Cultivation) of Title 8 (Health and Safety) of the Temecula Municipal Code is hereby amended in its entirety to read as follows:

**CHAPTER 8.52 – MARIJUANA CULTIVATION AND COMMERCIAL MARIJUANA ACTIVITY**

**Sections:**

**8.52.010 – Findings and purpose.**

**8.52.020 – Authority.**

**8.52.030 – Definitions.**

**8.52.040 – Prohibitions on commercial marijuana activity.**

**8.52.050 – Prohibitions on marijuana cultivation – Nuisance declared.**

**8.52.060 – Limited exemption from enforcement for medical marijuana.**

**8.52.070 – Abatement of other nuisances.**

**8.52.080 – Violations and penalties.**

**8.52.010 Findings and purpose.**

The City Council finds and declares the following:

A. The Control, Regulate and Tax Adult Use of Marijuana Act (the "AUMA"), was approved by the voters of the State of California on November 8, 2016. The AUMA adds Section 11362.1 to the Health and Safety Code, which makes it "lawful under state and local law" for persons 21 years of age or older to "possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever" up to 28.5 grams of marijuana not in the form of concentrated cannabis or up to eight grams of marijuana in the form of concentrated

cannabis. The provisions of the AUMA related to the possession, use, and cultivation of marijuana became effective on November 9, 2016.

B. To regulate the commercial use of non-medical marijuana, the AUMA adds Division 10 (Marijuana) to the Business & Professions Code, Sections 26000 et seq., which grants State agencies the authority to create, issue, renew, discipline, suspend, or revoke licenses for marijuana businesses. The AUMA provides that the State shall begin issuing licenses to marijuana businesses under Division 10 of the Business and Professions Code by January 1, 2018.

C. Business and Professions Code section 26055(e) provides that a State licensing authority shall not approve an application for a State license for commercial non-medical marijuana activity, if approval of the State license will violate the provisions of any local ordinance.

D. The AUMA permits cities to (1) adopt and enforce local ordinances to regulate non-medical marijuana businesses, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or (2) completely prohibit the establishment or operation of marijuana businesses within its jurisdiction.

E. The AUMA allows for the planting, cultivation, harvesting, drying and processing ("cultivation activities") of up to six marijuana plants in, or upon the grounds of, a private residence, as well as the possession of any marijuana produced by the plants. The AUMA authorizes a city to enact and enforce an ordinance that reasonably regulates cultivation activities, and to completely prohibit cultivation activities outdoors upon the grounds of a private residence unless the California Attorney General determines that non-medical use of marijuana is lawful in the State under Federal law.

F. On October 9, 2015, Governor Brown signed Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643 into law, which are now collectively known as the Medical Cannabis Regulation and Safety Act (hereinafter "MCRSA"). The MCRSA establishes a State licensing scheme for commercial medical marijuana uses, while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. The MCRSA allows a city to completely prohibit commercial medical marijuana activities, including the cultivation of medical marijuana.

G. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996" or "CUA"). The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments supporting

Proposition 215 expressly acknowledged that “Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere.”

H. In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7, *et seq.*, and referred to as the “Medical Marijuana Program” or “MMP”) to clarify the scope of Proposition 215, and to provide qualified patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances.

I. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land...” Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal. App.4th 975, the Court of Appeal held that “there is no right—and certainly no constitutional right—to cultivate medical marijuana...” The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority. Numerous court decisions have held that the CUA and MMP provide criminal law immunities for qualified patients, persons with identification cards, and primary caregivers to possess, store and cultivate marijuana, but do not preempt local land use ordinances from prohibiting medical marijuana businesses, deliveries, storage, possession and cultivation. *Kirby v. County of Fresno*, 242 Cal.App.4th 940, 969-70 (2015); *Safe Life Caregivers v. City of Los Angeles*, 243 Cal.App.4th 1029, 1032 (2016).

J. The Federal Controlled Substances Act, 21 U.S.C. §§ 801, *et seq.*, classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for any purposes.

K. Cities in California have reported negative effects of marijuana cultivation, processing and distribution activities, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests. Furthermore, as marijuana plants begin to flower, and for a period of two months or more, the plants produce a strong, unique odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors. This odor can have the effect of encouraging

theft by alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery of the plants and creating the potential for violent acts related to such criminal activity.

L. Marijuana cultivation in the City can adversely affect the health, safety, and well-being of City residents, visitors and workers. Regulating marijuana cultivation in the City is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, and malodorous smells that may result from unregulated marijuana cultivation, and that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

M. The justification for regulating or banning commercial marijuana cultivation pursuant to the City's police power includes, but is not limited to: 1) The increased risk to public health and safety, based on the value of marijuana plants and flowers and the accompanying threat of break-ins, robbery and theft, and attendant violence and injury; 2) the strong "skunk like" malodorous fumes emitted from mature plants which can interfere with the use and enjoyment of neighboring properties by their occupants; and 3) the potential for theft and use by school age children where marijuana is cultivated in a visible location, particularly where such location is close to schools.

N. As recognized by the Attorney General's August 2008 Guidelines for the security and non-diversion of marijuana grown for medical use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

#### **8.52.020 Authority.**

This ordinance is adopted pursuant to the authority granted by Article XI, section 7 of the California Constitution, Health and Safety Code section 11362.83, Government Code sections 25845 and 53069.4, the MCRSA, the AUMA, and other applicable law.

#### **8.52.030 Definitions.**

As used in this Chapter the following specific terms shall have the following meanings:

A. "AUMA" means the Control, Regulate and Tax Adult Use of Marijuana Act approved by the voters on November 8, 2016, as the same may be amended from time to time.

B. "Child care center" means any licensed child care center, daycare center, child care home, or any preschool.

C. "Community center" means any facility open to the public at which classes, social activities, recreational activities, educational activities, support and public information are offered for all residents of the community.

D. "Commercial marijuana activity" means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery, or sale of marijuana and marijuana products, whether or not for profit. "Commercial marijuana activity" also includes the activities of any business licensed by the State or other government entity under Divisions 8 or 10 of the Business & Professions Code, as they may be amended from time to time.

E. "Concentrated cannabis" shall have the same meaning as "cannabis concentrate" as defined in Business and Professions Code section 19300.5, as the same may be amended from time to time.

F. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

G. "Delivery" means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also means the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under California law, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

H. "Distribution" means the procurement, sale, and transport of marijuana and marijuana products between entities licensed under Divisions 8 or 10 of the Business & Professions Code, as they may be amended from time to time.

I. "Fully enclosed and secure structure" means a space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors. The fully enclosed and secure structure must maintain a minimum ten (10) foot setback from any property line. Such setback distance shall be measured in a straight line from the fully enclosed and secure structure in which the marijuana plants are cultivated. The ten (10) foot setback requirement does not apply to cultivation occurring in a garage.

J. "Marijuana" means parts of the plant *Cannabis sativa linnaeus*, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Marijuana" also means the separated resin, whether crude or purified, obtained from marijuana, and any product containing marijuana. It does not include:

1. Industrial hemp, as defined in Section 11018.5 of the California Health and Safety Code; or

2. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.



Marijuana also includes “cannabis” as defined in Business and Professions Code section 19300.5(f), as the same may be amended from time to time.

K. “Marijuana cultivation” means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, fixed or mobile, for medical, non-medical or other uses.

L. “MCRSA” means the Medical Cannabis Regulation and Safety Act as contained, codified, enacted, and signed into law on October 9, 2015, as Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643, and as amended by Assembly Bill 21 in 2016, as the same may be amended from time to time.

M. “Person” means any individual, firm, co-partnership, joint venture, association, collective, cooperative, corporation, limited liability company, non-profit, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

N. “Primary caregiver” shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7, *et seq.*

O. “Private residence” means a house, an apartment unit, a mobile home, or other similar dwelling that is lawfully used as a residence.

P. “Qualified patient” shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7, *et seq.*

Q. “School” means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a home school, vocational or professional institution of higher education, including a community or junior college, college, or university.

R. “Youth-oriented facility” means any facility that caters to or provides services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

#### **8.52.040 Prohibitions on commercial marijuana activity.**

A. Commercial marijuana activity for medical, non-medical or other purposes is expressly prohibited everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones. No person shall establish, operate, maintain, conduct or allow commercial marijuana activity for medical, non-medical or other purposes anywhere within the City. No application for a building permit, conditional use permit, business license, or any other entitlement authorizing the establishment, operation, maintenance, development, or construction of any use that allows for commercial marijuana activity for medical, non-medical, or other purposes, shall be approved by the City.

B. A property owner shall not rent, lease or otherwise permit any business that engages in commercial marijuana activity to occupy real property in the city. A property owner shall not allow any person or business to establish, operate, maintain, conduct, or engage in commercial marijuana activity on any real property owned or controlled by that property owner that is located in the City.

C. This section shall prohibit all activities for which a State license is required pursuant to the AUMA or the MCRSA. Accordingly, the City shall not issue any permit, license or other entitlement for any activity for which a State license is required under the AUMA or the MCRSA. The City shall also not issue any local license to a non-profit entity pursuant to Business and Professions Code section 26070.5.

D. The prohibition in this section shall not prohibit a person 21 years of age or older from (1) possessing, processing, purchasing, transporting, obtaining or giving away to persons 21 years of age or older, without compensation whatsoever, not more than 28.5 grams of marijuana not in the form of concentrated cannabis or up to eight grams in the form of concentrated cannabis, (2) smoking or ingesting marijuana or marijuana products, (3) possessing, transporting, purchasing, obtaining, using, manufacturing, or giving away marijuana accessories to persons 21 years of age or older without compensation whatsoever, to the extent that such activities are authorized by Health and Safety Code section 11362.1, or (4) engaging in the indoor cultivation of six or fewer live marijuana plants within a single private residence or inside an accessory structure located upon the grounds of a private residence that is fully enclosed and secured, to the extent such cultivation is authorized by Health and Safety Code sections 11362.1 and 11362.2.

E. The prohibition in this section shall not prohibit the transportation of marijuana or marijuana products on public roads by a person licensed by Chapter 3.5 of Division 8 or Division 10 of the Business and Professions Code.

#### **8.52.050 Prohibitions on marijuana cultivation—Nuisance declared.**

A. Marijuana cultivation, outdoors, for medical, non-medical or other purposes, is prohibited everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones and is hereby declared to be unlawful and a public nuisance, except as otherwise provided in Section 8.52.060. No person owning, renting, leasing, occupying or having charge or possession of any parcel shall cause or allow such parcel to be used for cultivating marijuana outdoors. The foregoing prohibition shall be imposed regardless of the number of qualified patients or primary caregivers residing at the premises or participating directly or indirectly in the cultivation. Further, this prohibition shall be imposed notwithstanding any assertion that the person or persons cultivating marijuana are the primary caregiver or caregivers for qualified patients or that such person or persons are collectively or cooperatively cultivating marijuana. There is a limited exemption from enforcement of this subsection as set forth in Section 8.52.060 below.

B. Marijuana cultivation, indoors, for medical purposes is prohibited. There is a limited exemption from enforcement of this subsection as set forth in Section 8.52.060 below.

C. Marijuana cultivation, indoors, for non-medical purposes will be allowed consistent with State law. As required by State law, no more than six (6) live marijuana plants may be planted, cultivated, harvested, dried, or processed within a single private residence or inside an accessory structure located upon the grounds of a private residence that is fully enclosed and secured. Any marijuana cultivation for non-medical marijuana purposes that exceeds the limits set forth in this subsection is hereby declared to be unlawful and a public nuisance.

#### **8.52.060 Limited exemption from enforcement for medical marijuana.**

A. The City is committed to making efficient and rational use of its limited investigative and prosecutorial resources. There shall be a limited exemption from enforcement for violations of this Chapter by primary caregivers and qualified patients for small amounts of marijuana cultivation for their own medical use in zone classifications identified in Section 17.06.030 on which a single family detached dwelling exists when all of the following conditions and standards are complied with:

1. The premises shall contain a legally permitted single family detached dwelling.

2. Cultivation of no more than twelve (12) marijuana plants per qualified patient. In the event a qualified patient has a primary caregiver cultivating marijuana plants for the qualified patient, only one primary caregiver may cultivate no more than twelve (12) marijuana plants for that qualified patient at any one time. In no circumstances shall a qualified patient have multiple primary caregivers cultivating marijuana plants for the qualified patient at the same time in the City.

3. Two (2) qualified patient limit to aggregate marijuana plant count for a maximum total of twenty-four (24) marijuana plants per premises.

4. At least one qualified patient or one primary caregiver, acting on behalf of the qualified patient pursuant to subsection A.2., must live on the premises.

5. All marijuana plants must be reasonably secured to prevent theft and access to the plants by persons under the age of twenty-one (21), to a standard satisfactory to the enforcement official.

6. All marijuana cultivation outside of any building must be fully enclosed by an opaque fence at least six (6) feet in height. The fence must be adequately secured to prevent unauthorized entry. Bushes, hedgerows, plastic sheeting, tarps, or cloth material shall not constitute an adequate fence under this subsection. Premises larger than five (5) acres are exempt from this fencing provision so long as all other standards and conditions of subsection A. of this section are complied with and any barriers used are otherwise consistent with this Code.

7. Each building or outdoor area in which the marijuana plants are cultivated shall be set back at least ten (10) feet from all boundaries of the premises. Such setback distance shall be measured in a straight line from the building in which the marijuana plants are cultivated, or, if the marijuana plants are cultivated in an outdoor area, from the fence required by subsection A.6. to the boundary line of the premises.

8. The designated marijuana cultivation area must not be visible from any public right-of-way.

9. If the person cultivating marijuana plants on any premises is not the owner of the premises, such person shall submit a letter from the owner(s) consenting to the marijuana cultivation on the parcel. An original of this letter shall be submitted to and retained by the Community Development Department. The City shall prescribe forms for such letters.

10. Parolees or probationers shall not live on the premises unless the parolees or probationers have received written confirmation from the court that he or she is allowed to use medical marijuana while on parole or probation pursuant to Health & Safety Code section 11362.795 which shall be subject to verification by the enforcement official.

11. Qualified patients for whom the marijuana plants are being cultivated shall have valid medical marijuana identification cards issued by the Riverside County Department of Public Health. Any primary caregiver cultivating marijuana plants for a qualified patient shall have a copy of the qualified patient's valid medical marijuana identification card issued by the Riverside County Department of Public Health which shall be kept on the premises.

12. The address for the premises must be posted and plainly visible from the public right-of-way.

13. The marijuana cultivation shall not be within a building containing two or more dwelling units.

14. The marijuana cultivation shall not be upon any premises located within one thousand (1,000) feet of any school, community center, or park.

15. The marijuana cultivation shall not be upon any premises containing a child care center, church (religious facility), or youth-oriented facility.

B. Any marijuana cultivation for medical purposes that does not comply with all of the standards and conditions in subsection A. of this section is a public nuisance and shall be subject to penalties and abatement as provided in Title 1 and Chapters 8.12 and 8.52 this Code.

#### **8.52.070 Abatement of other nuisances.**

Nothing in this Chapter shall be construed as a limitation on the City's authority to abate any nuisance which may otherwise exist from the planting, growing, harvesting, drying, processing or storage of marijuana plants or any part thereof from any location, indoor or outdoor, including from within a fully enclosed and secure building, as long as such abatement is consistent with State law.

#### **8.52.080 Violations and penalties.**

A. Violation of any provision of this Chapter is a misdemeanor and is subject to enforcement pursuant to the provisions of Title 1 of this Code. The provisions of this Chapter may be enforced by members of the Riverside County Sheriff's Department, persons employed by the City whose job descriptions require the person to enforce the provisions of this Code, including but not limited to, code enforcement officers, and such other enforcement officials as described in Section 1.16.020 of this Code or its successor sections. No provision of Title 1 or this Chapter shall authorize a criminal prosecution or arrest prohibited by Health and Safety Code sections 11362.71 or 11362.1 *et seq.*, as the same may be amended from time to time. In the event of any conflict between the penalties enumerated under Title 1 or this Chapter and any penalties set forth in State law, the maximum penalties allowable under State law shall govern.

B. Any violation of this Chapter shall be, and the same is declared to be, unlawful and a public nuisance, and the City may, in addition to or in lieu of prosecuting a criminal or administrative action hereunder, commence an action or actions, proceeding or proceedings for the abatement, removal and enjoinder thereof, in the manner provided by law, and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such commercial marijuana business or marijuana cultivation site and restrain and enjoin any person from operating, conducting or maintaining a commercial marijuana business or marijuana cultivation site in a manner contrary to the provisions of this Chapter."

**Section 2.** Section 17.02.050 is hereby added to the Temecula Municipal Code to read as follows:

"“Commercial marijuana activity” and “marijuana cultivation” (as defined in Chapter 8.52) for medical, non-medical or other purposes, are prohibited uses everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones and shall be prohibited uses, except as otherwise provided in Sections 8.52.040, 8.52.050, and 8.52.060.”

**Section 3.** The Community Development Director is authorized and directed to update the Use Regulations and Tables contained in Title 17, Zoning, to provide that commercial marijuana activity” and “marijuana cultivation” (as defined in Chapter 8.52) for medical, non-medical or other purposes, are prohibited uses everywhere in the City including all zoning districts, specific plan areas, overlay zones and planned development zones and shall be prohibited uses, except as otherwise provided in Sections 8.52.040, 8.52.050, and 8.52.060.

**Section 4 CEQA Findings.** The City Council finds that the adoption of this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Title 14, Chapter 3, California Code of Regulations (CEQA Guidelines), Section 15061(b)(3). It can be seen with certainty that there is no possibility that the adoption of this Ordinance will have a significant effect on the environment. The Ordinance prohibits commercial marijuana activity and regulates marijuana cultivation. Placing such a restriction on the use of property will not result in a permanent alteration of property nor the construction of any new or expanded structures.

**Section 5. Severability.** If any sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

**Section 6. Effect of Ordinance.** This Ordinance shall take effect thirty (30) days after passage

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Temecula this \_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Michael S. Naggar, Mayor

ATTEST:

\_\_\_\_\_  
Randi Johl, City Clerk

[SEAL]

STATE OF CALIFORNIA     )  
COUNTY OF RIVERSIDE    ) ss  
CITY OF TEMECULA         )

I, Randi Johl, City Clerk of the City of Temecula, do hereby certify that the foregoing Ordinance No. 17-        was duly introduced and placed upon its first reading at a



meeting of the City Council of the City of Temecula on the \_\_\_\_ day of \_\_\_\_\_, 2017,  
and that thereafter, said Ordinance was duly adopted by the City Council of the City of  
Temecula at a meeting thereof held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the following vote:

AYES: COUNCIL MEMBERS:

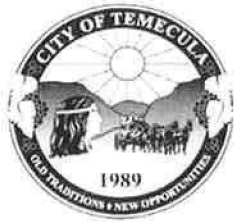
NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

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Randi Johl, City Clerk



# Notice of Public Hearing

**A PUBLIC HEARING** has been scheduled before the City of Temecula **PLANNING COMMISSION** to consider the matter described below:

- Case No:** LR16-1056 Commercial Marijuana Activity and Marijuana Cultivation Ordinance
- Applicant:** City of Temecula
- Proposal:** A staff initiated application to amend Chapter 8.52 and Title 17, Zoning, of the Temecula Municipal Code to prohibit all commercial marijuana activity in the City and to amend regulations pertaining to marijuana cultivation.
- Recommendation:** The Planning Commission will consider making recommendations to the City Council in order to implement Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act, approved by the voters of the State of California on November 8, 2016, including:
1. Recommend amending Chapter 8.52 of the Temecula Municipal Code to prohibit commercial marijuana activity (including cultivation, possession, manufacturing, distribution, processing, storing, laboratory testing, labeling, transportation, and sale of marijuana and marijuana products whether or not for profit) in the City;
  2. Recommend amending Title 17, Zoning, to prohibit all uses involving commercial marijuana activity in all zoning districts, specific plan areas, overlay zones and planned development zones; and
  3. Recommend amending Title 17, Zoning, to (a) prohibit marijuana cultivation outdoors, except as allowed for medical purposes under certain conditions, (b) allow the cultivation of up to six marijuana plants indoors for recreational purposes consistent with the Control, Regulate, and Tax Adult Use of Marijuana Act, and (c) allow the cultivation of up to twelve marijuana plants indoors or outdoors for medical purposes under certain conditions.
- Environmental:** In accordance with the California Environmental Quality Act (CEQA), the proposed ordinance is exempt from the requirements CEQA pursuant to Title 14, Chapter 3, California Code of Regulations (CEQA Guidelines), Section 15061(b)(3). It can be seen with certainty that there is no possibility that the adoption of this ordinance will have a significant effect on the environment. The ordinance prohibits commercial marijuana activity in the City and amends regulations pertaining to marijuana cultivation. Placing such a restriction on the use of property will not result in a permanent alteration of property nor the construction of any new or expanded structures.
- Case Planner:** Dale West, Associate Planner II
- Place of Hearing:** City of Temecula, Council Chambers  
41000 Main Street, Temecula, California
- Date of Hearing:** April 5, 2017
- Time of Hearing:** 6:00 p.m.

The agenda packet (including staff reports) will be available for viewing in the Main Reception area at the Temecula Civic Center (41000 Main Street, Temecula) after 4:00 p.m. the Friday before the Planning Commission Meeting. At that time, the packet may also be accessed on the City's website – [TemeculaCA.gov](http://TemeculaCA.gov). Any **Supplemental Material** distributed to a majority of the Commission regarding any item on the Agenda, after the posting of the Agenda, will be available for public review in the Main Reception area at the Temecula Civic Center (41000 Main Street, Temecula), 8:00 a.m. – 5:00 p.m. In addition, such material will be made available on the City's website – [TemeculaCA.gov](http://TemeculaCA.gov) – and will be available for public review at the respective meeting.

If you have any questions regarding any item of business on the Agenda for this meeting, please call the Community Development Department, (951) 694-6400.